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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/567,483

05/21/2007

Tae-Won Son

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8689

21567 7590 08/19/2008  
WELLS ST. JOHN P.S.  
601 W. FIRST AVENUE, SUITE 1300  
SPOKANE, WA 99201

EXAMINER

SOROUGH, LAYLA

ART UNIT

PAPER NUMBER

1617

MAIL DATE

DELIVERY MODE

08/19/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/567,483	<b>Applicant(s)</b> SON ET AL.	
	<b>Examiner</b> LAYLA SOROUGH	<b>Art Unit</b> 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The Office Action is in response to the Applicant's reply filed May 5, 2008 to the Office Action mailed on January 23, 2008.

Applicant's arguments over the 35 U.S.C. 102(e) rejection of claims 1-8 of Son et al. (US 2005/0037079)) is persuasive. Therefore, the rejection is herewith withdrawn.

Applicant's arguments over the 35 U.S.C. 103(a) rejection of claims 1-8 over Kross (US 6,664,301) is not persuasive. Therefore, the rejection is herewith maintained.

The rejections of record are restated below for Applicant's convenience.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kross (US 6,664,301).

Kross teaches cosmetic hydrogels containing gelling agents such as carrageenan, xanthan gum, locust bean gum gellan and/or agar. See col. 5, lines 37-40. The hydrogels contain 0.1-45% of glycols such as propylene glycol and/or glycerin, and other functional ingredients such as preservatives, alpha-hydroxy acids, collagen, peptides, herbal extracts (e.g. aloe vera) and water. See col. 4, lines 64-67; col. 6-7; Example 1. The hydrogels of Kross are useful for hydrating the skin. See col. 5, lines 5-

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14. The hydrogels of Kross are prepared by (a) mixing the gelling agents and dispersing the mixture in the mixture of polyols and preservative and then adding water to 100%; (b) heating the mixture to 82-85<sup>0</sup>C and mixing it; and (c) cooling the resulting gel. See Examples 1, 4-6. With respect to the limitation "hydrogel is transformed into a fluid state at 10-5<sup>0</sup> C", while the reference is silent on that, it clearly teaches the claimed combination of the gelling agents and the fact that the hydrogels are used to hydrate the skin as discusses above. While generally teaching the concentration of the ingredients and exemplifying the claimed concentrations of polyols and water (see col. 7, lines 10-33; Examples), the reference does not explicitly teach the claimed concentration of the gelation polymers and additives. However, determination of optimal or workable concentrations of the ingredients by routine experimentation is obvious absent showing of criticality of the claimed concentrations. One having ordinary skill in the art would have been motivated to do this to obtain the desired gelling properties of the composition as well as the desired cosmetic effect. With respect to Claim 8, the reference does not teach the exact order in which the ingredients are added. However, this is an obvious modification of the prior art. It would have been *prima facie* obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Kross such that to add plant extracts and other cosmetic additives (e.g. alpha-hydroxy acids or vitamins) as the last step of the process in order to protect such additives from prolonged exposure to high temperatures and thus, preserve the thermo-labile active ingredients.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

### ***Response to Arguments***

Applicant's arguments filed May 5, 2008 have been fully considered. The response to the arguments is as discussed below:

Applicant argues “noweher does Kross indicated any conversion of the hydrogel to a fluid state. Examiner respectfully reiterates: with respect to the limitation “hydrogel is transformed into a fluid state at 10-5<sup>0</sup>0 C”, while the reference is silent on that, it clearly teaches the claimed combination of the gelling agents and that the hydrogels are used to hydrate the skin as discusses above.

Additionally applicant argues, the ranges of concentrations recited are critical for proper gel formation and to impart the ability to transform to a fluid state at 10-50°C. Examiner states that unless a comparison is made with disclosure identical (not similar) with that of the reference, Applicant's argument comparing applicant's results with those of the prior art have no probative value.

Applicant's argument over claims 2-6 rejections depends on the validity of the previous arguments which were not found persuasive.

The arguments are not persuasive and the rejection is made **FINAL**.

Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

### ***Conclusion***

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Layla Soroush whose telephone number is (571)272-5008. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1617